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November 18, 2015

Cristy Wheeler
Vice President Legal & Corporate
Secretary Indiana, Kentucky and
Michigan American Water
555 E. County Line Rd., Suite 201
Greenwood, IN 46143

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CLERK - TREASURER

Dear Ms. Wheeler:

I am the West Lafayette City Attorney. I am writing to provide some background on the Fire Protection Ordinance No. 34-15, a copy of which is attached. Two provisions in this Ordinance have resulted in some confusion which I hope this letter will clear up.

The first provision states: "Irrigation meters for lawn watering purposes shall be excluded from the charge".

The second provision states: "A person who qualifies for low income relief shall receive a fifty percent (50%) reduction in the hydrant rental costs".

It is my understanding both provision are disallowed by I.C. 8-1-2-103(d) and I.C. 8-1-2-103(d)(1). In passing Ord. 34-15 with these two provision, it was not the intention of the City of West Lafayette to attempt in any way to control or direct Indiana American Water in how it is to calculate and charge rate pay for the fire protection charges under state law, applicable I.A.W. regulations and the new schedule of rates. Further, it is my legal opinion the City cannot control I.A.W. in any such regard due to the pre-emption of the state laws in this entire area of regulation. The same legal reasoning and opinion also apply to the IURC as a state instrumentally which cannot be controlled by the City in this pre-empted area.

The purpose for the inclusion of the two provisions was to serve the City Council's direction to the City administration to provide relief to the citizens described in the two provisions. It is the City's intention to refund such eligible citizens from the appropriate city funds until such time as changes in state code, regulations and/or the schedule of rates allow I.A.W. to accommodate such relief in a lawful and appropriate manner.

As further memorialization of the matters contained in this letter, I will be asking the City Council to approve a Resolution at their next regular meeting on December 7th which will specifically reference the clarifications cited above to the two provisions in Ord. No. 34-15. A draft copy of this Resolution is attached for any comments you may have.

In the meantime, the City of West Lafayette requests you proceed as soon as possible with the 30 day filing of the new schedule of rates so the new billings can begin effective January 1, 2016 as contemplated in Ord. No. 34-15.

Thank you for your continued assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'EHB', with a long horizontal flourish extending to the right.

Eric H. Burns

EHB:gl

cc: Beth Kogel Roads, Esq. IURC
Mayor, John Dennis
Clerk-Treasurer, Judy Rhodes
Fire Chief, Tim Heath

ORDINANCE NO. 34-15

A FIRE PROTECTION ORDINANCE PROVIDING FOR PAYMENT OF FIRE HYDRANT RENTAL COSTS BY INDIANA AMERICAN WATER COMPANY RATEPAYERS

WHEREAS, Indiana American Water Company owns and operates fire hydrants in the City of West Lafayette which serve and protect from fire threats resident, business, and city owned property in the City limits; and,

WHEREAS, the rental cost of the fire hydrants in the City limits are currently paid by the City with revenue from City taxpayers; and,

WHEREAS, the cost to the City taxpayers for fire hydrant rentals will be in excess of \$400,000 in the year 2016; and

WHEREAS, State-mandated circuit breaker limits have significantly reduced the funds available for city services including, primarily, public safety services; and,

WHEREAS, Indiana Code subsection 8-1-2-103(d) provides for the payment of fire hydrant rental costs imposed by Indiana American Water Company and approved by the Indiana Utility Regulatory Commission from the ratepayers of Indiana American Water Company rather than City taxpayers; and,

WHEREAS, the majority of Indiana cities operate under Indiana Code subsection 8-1-2-103(d) which provides that the cost of fire hydrant rentals is paid by ratepayers instead of taxpayers; and

WHEREAS, paying fire hydrant rental costs from ratepayers is prudent and necessary to allow tax funds to be used for maintaining city services, including, primarily, public safety services to the public; and,

WHEREAS, paying fire hydrant rental costs from ratepayers who directly benefit from the fire hydrants is a fair and reasonable method of paying for such costs.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that the provisions of Indiana Code subsection 8-1-2-103(d) are hereby adopted such that the charges for production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be added to the basic rates of all customers of Indiana American Water Company and its successors and assigns as regulated by the Indiana Utility Regulatory Commission, and as detailed in the attached Exhibit "A," which is made a part hereof. Irrigation meters for lawn watering purposes shall be excluded from the charge.

A person who qualifies for low income relief shall receive a fifty percent (50%) reduction in fire hydrant rental costs. Low income relief under this paragraph is only available for residential property. To qualify for low income relief, requests shall be made to the Controller

who shall have the authority to determine procedures to verify the eligibility of the requestor who shows that the requestor:

(1) is the head of the household; and

(2) is either:

(A) permanently and totally disabled as determined by the Social Security Administration; or

(B) has a total annual income which is at or below one hundred fifty percent (150%) of the Federal Poverty Guidelines as determined by the United States Health and Human Services Guidelines.

The effective date for addition of these changes in the basic rate shall be January 1, 2016 and that after said date, the cost of any fire hydrant installed at the request of the City shall be paid by or on behalf of the City.

The jurat for this document was not printed on discussion copies, in order to save paper and copying resources. If you have questions about this, please contact the Office of the Clerk-Treasurer at clerk@westlafayette.in.gov.

Thank you.

ORDINANCE NO. 34-15

Exhibit "A"

Public Fire Service Rate ESTIMATES

<u>Meter Size</u>	<u>Monthly Charge</u>
5/8"	\$3.32
1"	\$8.29
1 1/2"	\$16.58
2"	\$26.52
3"	\$49.73
4"	\$82.89
6"	\$165.78
8"	\$265.24
10"	\$431.02